4 The broader justice system

Judicial corruption is not confined to the inside of the courts. Corrupt lawyers, prosecutors, police and bailiffs are all in a position to distort the course of justice, as Edgardo Buscaglia shows. Police and prosecutors' offices, which are often branches of the executive, can be vulnerable to government or business pressure in carrying out criminal cases. They may collude by tampering with evidence, distorting the facts in a case, losing files, deliberately ignoring credible lines of inquiry or, in the worst case, extracting confessions under torture. Lawyers play a different role in creating the context for a free and fair trial. They might take bribes to present a sub-standard defence, bribe court staff to delay a case, or pay the judge to rule in favour of their client. Nicholas Cowdery looks at the checks and balances that ensure oversight among the police, prosecutor's office, attorney general's office and judges. Renowned corruption fighter Eva Joly looks at the dwindling power of the investigating magistrate, a hybrid prosecutor-judge common to European civil law systems. Don Deya and Arnold Tsunga look at the linkages between lawyers and corruption in Eastern and Southern Africa. The remaining two pieces look at the supply-side of justice-sector corruption. In an analysis of the Lesotho Highlands Water Project scandal, Fiona Darroch examines the manoeuvres employed by the law teams of international corporations to escape conviction for massive bribery. Jorge Fernández Menéndez presents a bleak account of how some Mexican judges have been bribed by drug traffickers in order to secure the acquittal of their associates despite overwhelming incriminating evidence of their crimes.

Judicial corruption and the broader justice system

Edgardo Buscaglia[1]

Judges and courts are part of a complex web of interdependent institutions, including the police and prosecution, which make up the justice system. Constructive reforms must therefore consider the complexities of the entire justice system and benefit the vast majority in a society, not just the elites. The mix of deregulation, the liberalisation of international trade and the privatisation of state enterprises in an increasingly globalised world has rendered more urgent the need for legal and judicial frameworks to address

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ever more sophisticated types of crimes affecting courts worldwide. Within criminal jurisdictions, the combination of increasing cross-border porosity and the use of advanced technologies by criminals has generated a bonanza for those engaging in public sector corruption. UN crime indicators show that the growth of public sector corruption linked to organised crime has grown by 67 and 39 per cent in Africa and Latin America, respectively, over the past 10 years.[2]

The structure of institutions and the decision-making process are important determinants of the type and level of corruption to be tackled. For ease of analysis, types of corruption within the justice system can be broadly classified into two general categories.

First, *internal court corruption* occurs when court officials (judges and support personnel) engage in procedural, substantive and/or administrative behavioural patterns for private benefit. Examples include cases where court users pay bribes to the court's support personnel in order to alter the legal treatment of files or evidentiary material; where users pay bribes to court employees to accelerate or delay a case or to illegally alter the order in which the case is to be attended or heard by the judge; or where court personnel embezzle public or private property that is in court custody. In civil, administrative and commercial law cases, the large economic interests frequently involved in litigation – particularly in privatisations – present an opportunity for court staff and judges to abuse their administrative or procedural discretion when, for example, issuing notifications to parties in dispute, calling witnesses, issuing injunctions or allowing procedural delays based on frivolous motions.

The second main type of corrupt practices involves *justice-sector corruption* where the interaction between the courts and other justice-sector institutions (i.e. higher courts, police, prosecutors or prison domains) explains the occurrence of corruption.[3] This type of corruption can also involve politically motivated court rulings and/or undue changes of venue where judges, police and prosecutors stand to gain economically or professionally as a result of corrupt action. Examples of this type abound. Studies of justice-sector corruption in Nigeria and Venezuela show that the most common manifestation of judicial corruption involves the tampering with evidence by prosecutors for material or financial gain. Prosecutors usually act in concert with the police in these cases.[4] When the case gets to court, judges are either pressured to stay silent and thus avoid the application of rules of evidence, or may collude with prosecutors for personal gain. In this context any kind of pressure by prosecutors on judges or court personnel (e.g. with the connivance of political actors, members of parliament or the

2 Edgardo Buscaglia, Samuel Gonzalez Ruiz and William Ratliff, 'Undermining the Foundations of Organized Crime and Public Sector Corruption', *Essays in Public Policy* (Stanford: Hoover Institution Press, 2005).

3 Undue pressures from political actors, litigant lawyers and businesses also explain court-specific corruption, as outlined in the case studies contained in this chapter.

4 Edgardo Buscaglia and Samuel Gonzalez Ruiz, 'How to Design a National Strategy Against Organized Crime and Public Sector Corruption in the Framework of the United Nations' Palermo Convention', in *The Fight Against Organized Crime* (New York: UNDP Press, 2002).

executive branch) tends to translate into abuses of substantive or procedural discretion in handling a case.

This essay addresses best practices in counteracting the most common factors that lead to the above-mentioned second type of corruption, that is, intra-institutional, justice-sector corruption. Other factors contributing to judicial corruption linked to the interaction between the courts, the state and society, such as pressures from political actors, litigant lawyers and businesses, and societal attitudes to the legal system, are analysed in other chapters.

Of course, one may perceive an overlap between the two types of corruption although the factors explaining the growth of each are distinctly different. Countries where judicial corruption is perceived as a policy priority, such as Nigeria or Indonesia, tend to experience a mix of both types of corruption.[5] That is, the existence of internal court corruption usually fosters the growth of justice-sector corruption, and vice versa.

Diagnosing justice-sector corruption

Due to their secretive nature, corrupt practices are difficult to measure through objective indicators, but quantitative data on corruption levels, coupled with detailed research of case files to identify abuse of procedural discretion by prosecutors and judges, allow us to draw conclusions about the phenomenon. A UN study published in 2003[6] looked at the extent and frequency with which justice-sector institutions (e.g. police and prosecutors), legal organisations (e.g. lobbies) and illegal groups (e.g. organised crime) penetrate the judiciary and manipulate the court system to bias decisions and favour their interests. (See also 'Mexico: the traffickers' judges' on page 77). To measure high-level judicial corruption, a composite index was constructed that takes into account:

- Court users' perceptions of corrupt practices arising from organised legal and illegal groups
- Court users' perceptions of independence of court decisions from legal and illegal pressure groups
- Likelihood of biased judicial rulings
- Perceptions of the percentage of the amount at stake paid in bribes
- Prevalence of state capture
- Objective measurement of the frequency of abuses of substantive and procedural discretion in rulings through sampling of case files.

5 Edgardo Buscaglia, 'An Analysis of Judicial Corruption and Its Causes: An Objective Governance-based Approach', *International Review of Law and Economics* 21 (2) (2001).

6 Edgardo Buscaglia and Jan van Dijk, 'Controlling Organized Crime and Public Sector Corruption: Results of the Global Trends Study', in *United Nations Forum* (Vienna: United Nations Press, 2003).

To assess the prevalence of low-ranking court corruption, an indicator was used that records how often users experienced actual corrupt practices in court while their cases were subject to legal proceedings. The indicator was compiled by the International Crime Victimization Survey (ICVS), using data that refer mainly to the low and medium-level corruption that an average citizen faces while interacting with the state, including the courts.

This analysis found that judicial independence is strongly related to levels of court corruption linked to prosecutors and police. Independent judges and autonomous prosecutors (working within an institution providing a civil service-based career) were less vulnerable to corruption and better able to implement laws even when the political system and other areas of the state had been captured by organised crime or private legal interest groups. In the 67 countries sampled in the study, the most frequently perceived corrupt judges and prosecutors were found to abuse their substantive and procedural discretion by slowing down or obstructing law enforcement while violating rules of evidence. Factors fostering corruption always included abuses of substantive, administrative and/or procedural judicial and prosecutorial discretion.

The countries with the highest quality of justice-sector resolutions and the lowest levels of corruption among the 67 countries in the UN study were, in descending order: Iceland, Norway, Denmark, Singapore, Finland, Austria, Sweden, Luxembourg, Switzerland, New Zealand, Hong Kong and the United Kingdom. At the opposite end of the scale, countries found to lack consistency and coherence in their justice-sector resolutions (i.e. those having frequent abuses of judicial discretion) were also countries where levels of court, prosecutorial and police corruption were high. Trailing the list of countries, in worsening order, were Venezuela, Indonesia, Nigeria, the Russian Federation, Argentina, Mexico, Brazil,[7] Philippines, South Africa, Thailand, India and Slovakia. The study also found that legal traditions *per se* (civil vs. common vs. Islamic systems) are not a significant factor in the determination of justice-sector corruption.

The most frequent abuses of prosecutorial and police-related discretion associated with court-related corruption (and lack of predictability in judicial rulings) were found to be:

- Contradictory pieces of circumstantial evidence introduced by the police within the material supporting a criminal indictment
- Prosecutors issuing criminal indictments with an insufficient account of crime-specific elements required by the procedural codes
- Lack of uniform criteria applied by prosecutors to the weighing of evidence generated by the police.

7 Although Brazil is not one of the more corrupt judiciaries in other rankings and despite the fact that its prosecutorial services are among the more independent in Latin America, the quality of judicial system resolutions is plagued with abuses of discretion, generating an ideal environment for the growth of future corruption.

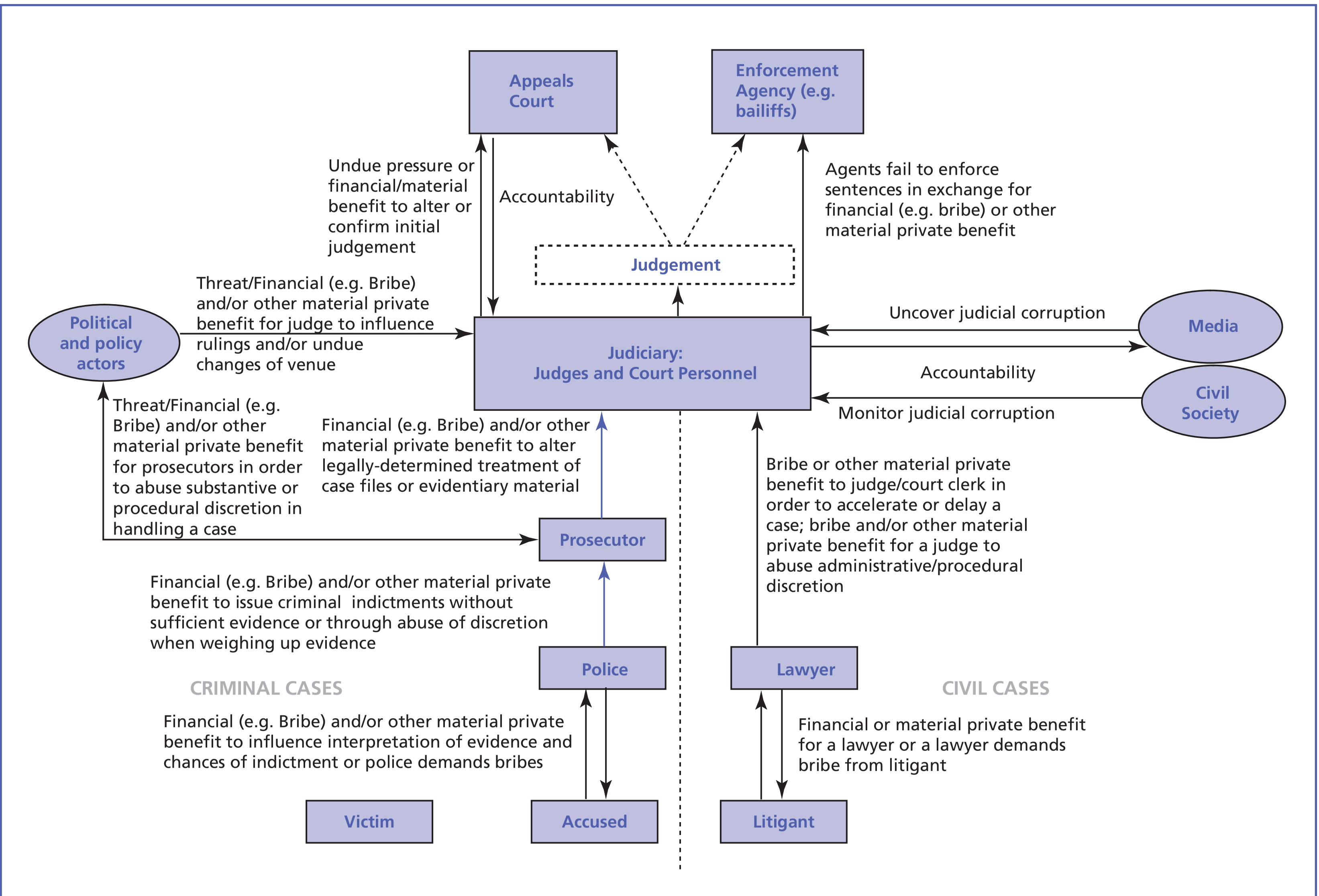

Figure 1: Key Actors in the Judicial System

Best international practices in countering justice-sector corruption

Corruption in the justice sector often occurs at the interfaces among the institutions that investigate, accuse and judge a case brought to the justice sector. Reforms should take all three elements into account, though certain branches of the justice system might be more resistant than others (see, for example, 'Sub-national reform efforts: the Lagos state experience' on page 146). There have been successes that can be drawn on as models of good practice. All these best-practice examples were tailored to local institutions through pilot projects before being carried out nationally.

Experiences in the 67 sampled countries referred to show that 'soft' measures alone, such as integrity-awareness campaigns, do not have much effect and can even reinforce public cynicism. Instead, justice-sector corruption should be tackled through a two-pronged approach: through social control mechanisms on the one hand; and through more effective punitive actions based on joint prosecution-judicial units (e.g. task force approaches used by prosecutors and judges in Italy and the United States), ensuring enhanced quality control of their resolutions and specialisation in complex cases.[8]

Transparency and adversarial systems

An important line of analysis that can be drawn through the countries studied is the distinction between legal systems that are adversarial and where public hearings are held; and countries where closed proceedings are frequent (as in China, Cuba and Zimbabwe). The greater transparency provided by different degrees of adversarial and public proceedings is usually associated with low levels of corruption.[9] Adversarial systems are not confined to common law systems. Islamic legal traditions (e.g. Jordan) and civil law systems (e.g. Italy and Spain) practise different kinds of adversarial proceedings (with different degrees of oral vs. written practices, with more or less transparency attached to them). These tend to increase the capacity of all parties within a dispute to challenge the evidence or resolutions generated by a judge or prosecutor, especially when evidence is based on tainted reports obtained through torture and other types of police corruption. When proceedings are conducted before legally mandated public audiences, the positive multiplier effect on lowering corruption is noteworthy. Judges, prosecutors and defence attorneys have to actively avoid the perception and the actual occurrence of abuses of discretion when they know that they will all be required to publicly provide reasons for their pre-trial and trial decisions.

When legal testimonies are offered in public, the benefits of an adversarial approach tend to neutralise any prior corrupt practices based on informal meetings or communications among prosecutors, defence lawyers and judges. Moreover, adversarial proceedings ensure the required

8 The task force approach does not necessarily mean creating specialised anti-corruption courts, but rather forming small teams of judges and prosecutors that share an *ad hoc* case file-based organisational framework throughout the procedural life of a case.

9 Alan Watson, *Society and Legal Change* (Philadelphia: Temple University Press, 2001).

immediacy between the judge and the evidence generated through the prosecutor/police or defence attorney. In this scenario, public adversarial proceedings allow for the 'ventilation' of evidence that needs to be weighed by all parties, based on clear and narrow criteria provided by the rules of evidence. These procedural characteristics tend to bypass the obscure and discretionary role of untrained administrative personnel that are so often found to be involved in extracting bribes from court users within inquisitorial legal systems. Within this context, the quality of justice-sector resolutions will tend to increase.

The adversarial and public nature of court proceedings is not, however, a guarantee of high-quality judicial resolutions or low levels of judicial corruption. For example, violations of due process within the US plea-bargaining practice abound when not checked through proper judicial review. In these cases overburdened prosecutors and public defence attorneys frequently rush, with weak evidence, toward public audiences where guilty pleas by low-income individuals indicted in homicide cases are entered. Years later, and after a public outcry by human rights organisations, DNA evidence proves their innocence while on death row.[10]

A second important target for reform throughout the broader justice system is the control system in place. Improved consistency and coherence of decisions are ensured by effective control systems within prosecutors' offices and enhanced judicial review mechanisms applied to rulings by either judicial councils or appellate court systems. The police will be less willing or able to generate false or tainted evidence when prosecutors perform their quality control of evidentiary material based on uniform criteria (i.e. procedural code or jurisprudential-related criteria). Field studies show that strict and uniform prosecutorial criteria for archiving or dropping criminal indictments, subject to supervisors' control, reduce the frequency of bribes offered to prosecutors. The experiences of Botswana, Chile, Colombia, Jordan and Malaysia show that judges, in turn, will be less able or willing to engage in corrupt collusion with prosecutors when adversarial proceedings take place at public audiences, while more effective judicial reviews are likely to shed light on irregularities conducted downstream within the judicial process.

Case management and training

In terms of case management, countries with the best legal implementation strategies have developed inter-institutional, computerised, joint case-management processes for police, prosecutors and judges. Multi-agency task force systems with joint management (for investigations, prosecution and court handlings), coupled with computerised court administrative tools that are accessible to defence lawyers in particular, and court users in general, reduce the likelihood of internal court or prosecutorial corruption.[11] Intra-institutional checks and balances are introduced when police, prosecutors and judges handle shared case files. In this connection, law-makers must contribute to empowering the judicial system to take on new and innovative programmes by allowing the introduction of electronic frameworks for handling

10 Edgardo Buscaglia, Samuel Gonzalez Ruiz, Ernesto Mendieta and Moises Moreno, *El Sistema de Justicia Penal y su Reforma: Teoría y Práctica* (Mexico: Editorial Fontamara, 2005).
11 Buscaglia and Gonzalez Ruiz (2002), op. cit.

complex evidence linking many case files; by enacting subsidiary legislation for better case management; and by upgrading judges' salaries based on clear and narrowly defined indicators of their courts' performance.

Investment in training prosecutors and judges in procedural law and case-management techniques, when coupled with performance-based indicators used for appointments and promotions, generates an institutional environment that discourages the application of random informal rules, contributing to fewer incidences of corruption linked to the handling of evidentiary material.[12] The existence of excessive procedural complexities within the legal domain is also correlated with high frequencies of abuses of courts' and prosecutorial discretion, as a precursor of corrupt practices within the courts (see Stefan Voigt, page 296).[13] There are many countries, such as Indonesia and Mexico, with clear formal rules regarding the administrative personnel's role in the investigation, prosecution and court management of a case file. But elsewhere, for instance in Nigeria, Venezuela and Zimbabwe, informal rules might be applied to proceedings. In these cases, administrative personnel adopt *de facto* legal roles in the production of indictments, in the generation of police reports and evidentiary material, and even in drafting sentences. Within this scenario, high levels of court-related corruption tend to be worsened by higher concentrations of administrative tasks in the hands of judges. In short, the gap between the formal and informal allocation of organisational roles and tasks within courts and prosecutorial domains is a factor linked to justice-sector corruption.

Involving civil society

The countries that fight justice-sector corruption most effectively usually rely on the willingness of citizens to help state law enforcement and judicial efforts to bring a case to its final resolution. Public confidence and procedural transparency are required for this citizen–state interaction to be effective. Where hearings are public, specialised NGOs that can technically assess the quality of judicial proceedings can foster social pressure for improvements within the justice sector, by using the media or writing reports aimed at legislatures and the public in general (see 'Civil society's role in combating judicial corruption in Central America' on page 115).

But to build public trust in the criminal justice system civil society needs to see the tangible results of the state's ability – and not just willingness – to implement reforms. Moreover, the leaders of the judiciary and law enforcement agencies (attorney general, chief prosecutors, chief of national police and members of the Supreme Court) must all have track records of organisational leadership and high ethical standards. Political will and the ability to execute reforms are pre-conditions for building trust and carrying out successful criminal justice policies.

Successful criminal justice system reforms first require the help and support of other institutions, particularly the political powers of government. Civil society can help generate the impetus for reforms that might otherwise be unpopular with political actors. In Chile and Costa Rica, for

12 Ibid.

13 Edgardo Buscaglia and Maria Dakolias, 'An Analysis of the Causes of Corruption in the Judiciary', technical paper (Washington, D.C.; World Bank, 1999).

example, the judiciary drove the process of reform, which led to an adversarial system with public hearings and a more independent judicial branch, thereby reducing the risk of prosecutorial and court corruption. The reforms required political actors to make the choice to acquiesce in greater judicial independence and prosecutorial autonomy. It is important, therefore, to take into account the costs and benefits faced by individual politicians and justice-sector actors who will lose their capacity to use the justice sector in their quest for power.

Recognising this early on, countries like Italy sought to build bridges between the public sector and civil society in order to win high-profile cases against judicial corruption linked to organised crime.[14] The relative success in enhancing the effectiveness of the justice sector's fight against the Mafia in Italy was supplemented by public information/education campaigns. Civil society institutions, such as the bar association and law schools, need to play a key role in the reform process.

Effects of judicial independence and accountability on justice-sector corruption

As noted elsewhere in this volume, a balance between judicial accountability and judicial independence is a necessary condition for achieving success in enforcing laws against justice-sector corruption. Judicial independence means that the decision-making autonomy of an individual judge or prosecutor can be ensured by introducing mechanisms that block the influence of undue pressures from inside or outside the justice system during the generation of justice-sector resolutions. Granting judges independence, while subjecting them to effective accountability mechanisms, will deter prosecutorial and police corruption.

Yet lessons from international experience show that the balance between accountability (instilled by meritocracy in judicial appointments, promotions and dismissals, coupled with proper training and monitoring of judicial conduct) and institutional independence often requires a prior pact among the mainstream political forces in the legislative and executive domains.

The cases of Poland, the Czech Republic, Costa Rica and to some degree Chile show that when the political concentration of power in the legislative and executive branches is relatively balanced so that alternation in power through elections is a likely outcome, judicial systems are more able to interpret laws with independence and autonomy,[15] thereby helping to avoid prosecutorial and court corruption. To some degree, a balance of power among truly competing political forces creates an increased willingness among politicians to give up a good part of their political control of court and prosecutorial decisions in order to avoid a 'mutually assured destruction' in subsequent electoral periods when the opposition may take over and also use the justice sector against the incumbents. This sequential game among the political forces operates as a facilitator that promotes the legislative measures needed to implement reforms.

A framework to guide policy makers during legal and judicial reform must first identify the main areas within which corrupt practices are most likely to hamper courts' abilities to adjudicate

14 Leoluca Orlando, *Fighting the Mafia* (New York: Simon & Schuster, 2001).
15 Buscaglia and van Dijk (2003), op. cit.

cases. The identification of these areas must focus on the links between court systems and other justice-sector institutions without neglecting to review the factors hampering independence in the judiciaries themselves. Once the political pre-conditions are met, legal initiatives must then address technical best practices, such as the ones mentioned above. Lessons from Costa Rica, the Czech Republic, Chile, Italy and the US show the following best practices in curbing corruption across the justice system.

- Clear and narrow criteria to be applied by an autonomous body and an autonomous attorney general's office to judicial and prosecutorial appointments, promotions and dismissals.
- Development of uniform case-management systems implemented within the police, prosecutorial and court domains, coupled with transparent, coherent and consistent rules for case assignments and changes of venue.
- Adoption of uniform and predictable administrative (i.e. personnel and budget-related) measures founded on rewards and penalties driven by performance-based indicators, thus clarifying the career horizon of justice-sector officers.
- Reform of the criminal justice system's structure. This includes enforcing clear organisational roles for judicial, prosecutorial and police personnel to secure their own internal autonomy, while assuring transparent mechanisms to share information.
- Enhancement of the ability of judiciaries to review the consistency and coherency of decisions embodied in court rulings by improving the effectiveness of judicial reviews of court decisions, while allowing the monitoring of civil society-based, social control mechanisms through adversarial proceedings conducted within public audiences.

Conclusions

Justice-sector corruption is determined by the quality of governance prevailing within each of the justice-sector institutions and by the nature of the interaction among them, and not just by factors internal to the courts. In this context, institutional policies that foster improvements in the fight against justice-sector corruption within the courts, prosecutorial, police and prison domains are interdependent and need to be coordinated.

The need for sector-wide reforms to tackle corruption is rendered more urgent when their impact on human development is considered. Levels of justice-sector corruption correlate with indicators of human development.[16] It is impossible to say that a lack of human development 'causes' judicial corruption, or vice versa, but, for example, low levels of public literacy/public education are linked in a vicious circle with justice-sector corruption. Countries that have given priority to crime and corruption control in the early stages of development, among them Singapore, Botswana and Costa Rica, have shown some success in the relative improvement of human development in their regions. The list of countries with dysfunctional state systems,

16 Buscaglia and van Dijk (2003), op. cit.; Buscaglia (1997), op. cit.

justice-sector corruption and stagnant economies is depressingly long by comparison. These states need to further emphasise the fact that by strengthening their ability to prevent and control justice-sector corruption, they can also eliminate major impediments to socio-economic and political development.

Mexico: the traffickers' judges

Jorge Fernández Menéndez[1]

Mexico's justice system reacts oddly when dealing with criminals involved in organised crime, especially drug trafficking. Since drug trafficking is a federal crime, it must be addressed by judges from the federal jurisdiction; state and municipal-level justice systems cannot be involved (nor local governments and local police). This leaves the fight against drug trafficking in the hands of a very few people who are therefore more vulnerable to corruption, as well as to pressure, threats and physical attacks from criminal elements.

Judges involved in drugs trafficking cases do not receive any special protection and are more susceptible to coercion and corruption. *Plata o plomo* (meaning 'silver or lead', in other words what will make a judge comply with a corrupt demand: money or a bullet?) is the question asked in trafficking circles to assess how amenable a judge might be to corruption when it comes to sentencing. This 'choice' is repeated at every level of investigation throughout the police and judicial systems. This does not mean that there are not police, prosecutors and judges who are honest and carry out their work efficiently. But in such an environment corruption easily penetrates the system.

José Luis Gómez Martínez, a judge in Mexico's highest security prison, has handed down numerous decisions in the past few years absolving a number of people linked to the Sinaloa drug cartel. His sentences sparked complaints by the attorney general's office, which denounced him to the federal judicial council (CFJ), the agency responsible for evaluating judges' sentences and protecting their integrity, and also started an investigation against him. To date, the CFJ has not found any 'irregularities' in the judge's decisions.

But some irregularities are easy to spot. Judge Gómez Martínez presided in the case against Olga Patricia Gastelum Escobar and Felipe de Jesús Mendivil Ibarra, both accused of harbouring and transporting money belonging to the Sinaloa cartel to drug trafficker Arturo Beltrán Leyva, a close associate of *El Chapo*, the head of the cartel. The couple were detained while attempting to escape from police with close to US $7 million in cash and US $500,000 worth of jewellery and watches. They were armed.

In April 2005, Judge Gómez Martínez cleared Olga Patricia Gastelum Escobar of wrongdoing in a sentence that was marred by many irregularities, most notably that the public prosecutor's office (which instigated the case) was notified of the result only 24 hours after the woman was freed from prison. This violated article 102 of the Criminal Procedural Code, which stipulates that decisions cannot be executed without first notifying the public prosecutor. The defendant went free although a separate investigation had been initiated against her. A complaint about the decision

1 Jorge Fernández Menéndez is a radio and print journalist in Mexico, and author of a number of books on drugs trafficking and power in Mexico.

was filed with the CFJ, which argued that verdicts of innocence did not need to be notified to the public prosecutor. Although Judge Gómez Martínez was not sanctioned, an appeal against the sentence was brought before the second circuit appeals court, which found that Gastélum Escobar's criminal liability had clearly been demonstrated. Nonetheless, she remains at liberty.

But the scandal does not end there. Despite the appeal court's decision against Gastelum Escobar and the fact that she had already declared that her partner, Mendívil Ibarra, was a drug trafficker, the same judge considered that he, too, was innocent.[2]

There are other cases involving Gómez Martínez. In 2004, a group of 18 hit men loyal to the Sinaloa cartel were detained in Nuevo Laredo by the Mexican army. They were carrying 28 long guns, two short guns, 223 cartridges, 10,000 bullets, 12 grenade launchers, 18 hand grenades, smoke grenades, bullet-proof vests and equipment reserved for military use. Gómez Martínez set them free, arguing they were innocent of charges of involvement with organised crime. The same judge ordered Archivaldo Iván Guzmán Salazar, son of *El Chapo*, to be set free after he was accused of money laundering and murdering a young Canadian while leaving a bar.[3]

The case of Gómez Martínez is not exceptional. A judge in Guadalajara, Amado López Morales, decided that Héctor Luis '*El Güero*' Palma, one of Mexico's best known drug traffickers, was no such thing (he called him an 'agricultural producer') despite the fact that he was detained in charge of an arsenal of weapons. He decided the crime of amassing weapons should merit only five years in prison. A second judge, Fernando López Murillo, reduced the penalty to two years and also decided that the former commander of the federal judicial police, Apolinar Pintor, who had sheltered *El Güero*, should be exonerated because he only did it out of 'friendship' – and not because he was paid.[4] When Arturo Martínez Herrera, leader of a group of hit men known as *Los Texas*, was detained with 36 long weapons, and 10 kg of cocaine and marijuana, Judge López Morales dismissed the charges. The only sentence he gave was for criminal association, for which he awarded a sentence of two years, commutable for a fine of US $10,000. When the sentence was reviewed, the appeals court condemned Martínez Herrera to 40 years in prison.[5]

Another notable judge is Humberto Ortega Zurita from Oaxaca. Two men were detained in a car in 1996 with 6 kg of pure cocaine: the judge absolved them declaring that no one could be sure that the cocaine was theirs. Some time later, a woman was detained in a bus with 3 kg of cocaine taped to her stomach. The judge had no doubt: the woman was set free because he considered that 'she did not carry the drugs consciously'. A short time later, Judge Ortega Zurita 'committed suicide' by stabbing himself several times in the heart.[6]

The Mexican judicial system does not function adequately. But it is also true that there are protections against corruption, and institutions, such as the CFJ, that should bring some order to the chaos.

2 An appeals court reversed the decision and sentenced Ibarra to 17 years in prison. See *La Jornada* (Mexico), 5 October 2006.

3 Office of the Attorney General, Boletín 789/05 at www.pgr.gob.mx/cmsocial/bol05/jul/b78905.htm The PGR successfully appealed against the decision to free Guzmán Salazar.

4 Office of the Attorney General, Boletín 183/97 at www.pgr.gob.mx/cmsocial/bol97/jun/b0018397.htm The day after issuing his decision, López Murillo told the press that the case had made him fear for his life.

5 Office of the Attorney General, Boletín 049/97 at www.pgr.gob.mx/cmsocial/bol97/ene/b0004997.htm Judge Morales was dismissed by the CFJ and prosecuted for collusion with drug traffickers. He is currently in prison.

6 Report of the UN special rapporteur on the independence of judges and lawyers, January 2002, E/CN.4/2002/72/Add.1

What is unusual about cases like that of Gómez Martínez is not the quality of his decisions, but the CFJ's refusal to take any action against him when in most cases the appeals court drastically altered the sentences, denouncing the judge's 'ineptitude and lack of knowledge of criminal law'.

The rule of *plomo o plata* continues to taint the justice system. Some traffickers have been detained for years without receiving a firm sentence, exploiting the deficiencies of the justice system with the sole objective of avoiding deportation to the United States where they would face more serious charges.

Judicial corruption from the prosecution's perspective

Nicholas Cowdery AM QC[1]

The prospect of corruption in the criminal jurisdiction of the courts is a matter of special concern to prosecutors. A necessarily close professional relationship exists between prosecutors and judges, and they keep a close eye on each other: partly because prosecutors carry out a quasi-judicial role in some respects; partly because prosecutors, like judges, represent the community at large and the general public interest; and partly because prosecutors, acting professionally, need the judiciary to respond to their cases in a professional manner on a level playing field.

There are many ways in which a prosecutor can engage in corruption in a criminal case. A prosecutor may select a charge that reflects less than the degree of criminality in the conduct of the defendant. Evidence may be withheld. A putative defence may not be challenged to an appropriate extent, in an effective way or at all. Arguments in favour of conviction or penalty may be weakened. Prosecution corruption usually comes about in favour of a defendant because a guilty defendant has a strong personal interest in evading justice. It can, however, also favour the prosecution, through improper influence, reward or threat; through partiality on the part of a prosecutor; or through improper personal association with an investigator, witness or judicial officer.

Prosecution models and limits on independence

The prosecution of crime is an essential function of the executive government. To work at their best, prosecution agencies should be independent of other branches of government – the legislature (which makes the laws), executive agencies (which administer the laws and manage the business of government) and the judiciary (which resolves disputes and applies the law). In some jurisdictions such independence may be qualified in certain respects.

1 Nicholas Cowdery is Director of Public Prosecutions in New South Wales, Australia and immediate past president of the International Association of Prosecutors.

One of the more independent prosecution models is the English scheme in its applications around the globe (Australia, New Zealand, Canada, Hong Kong, some African countries and Pacific islands and so on). The prosecution sits in the executive but exercises some quasi-judicial, decision-making functions and works most closely with the judiciary. In this model it is regarded as inappropriate for either the judiciary or the prosecution to be specially influenced by the legislature or the executive (or, in the case of the prosecution, other parts of the executive). Prosecutors should be guided by the law, the evidence and any proper guidelines in place. Political interests, media pressure and the wishes of sectional groups or individuals in the community should be eschewed.

There are qualifications on independence even in this model, however. In England and Wales the attorney general who 'superintends' and directs the Crown Prosecution Service is a government minister, a member of the legislature and *ex-officio* chairman of the general counsel of the bar. This closeness of minister and chief prosecutor also exists in Hong Kong, Canada, a number of African Commonwealth countries and in Australia, where directors of public prosecutions (DPPs) are responsible to attorneys general. Such relations need not be a cause for alarm. In New South Wales, for example, the DPP might corruptly decide not to prosecute a matter, but the attorney general could intervene and conduct the prosecution if after consultation the DPP did not change his position. Conversely, the attorney general could corruptly endeavour to persuade the DPP not to proceed with a prosecution, but the DPP might nevertheless proceed. In some common law jurisdictions discussions between the attorney general and the DPP, and the decisions arrived at, are not made public, whereas in some civil law jurisdictions instructions from the minister to the prosecution service in individual cases are part of the public record.

Such independence may be limited in other models. For example, in many jurisdictions (e.g. Malaysia) prosecutors have no discretion to alter charges that have been laid by police. If there is a *prima facie* case for that charge, the prosecution must proceed. There can be no negotiation of charge (plea bargaining) or discretionary adjustment of charges by prosecutors. The prosecutor's independence in decision making and in the conduct of a prosecution is fettered by police action, and the danger of any later influence of corruption at the police level is more marked.

In the Netherlands and France prosecutors are even more closely allied with the judiciary and, indeed, with particular courts. In these countries an inquisitorial system exists where the judge has a different, more investigative role to play, assessing the evidence on the basis of statements and submissions (though, as Eva Joly describes on page 84, this role has been diminished in France). In the Netherlands, prosecutors may even act as judges for short terms. In such cases there is a risk that the judiciary might be seen as lacking independence, aligning itself with the prosecution to the disadvantage of the defendant. The historical development and justification of these arrangements put them in a somewhat different light, but they remain problematic.

Another factor that might compromise prosecutorial independence and increase the risk of corruption is funding. Government funding to prosecution agencies may, overtly or covertly, be made subject to political satisfaction with performance. A chief prosecutor who does not bend to the political wind may have funds withheld or reduced. Performance measures (on which funding may be contingent) may be put in place that encourage corruption and inappropriate

practice (e.g. one measure may be the number of convictions achieved). Additional funding for an unusual, high-profile and politically sensitive prosecution may be denied. Any one of these measures puts pressure on the prosecution.

Another important distinction between models is whether any agencies enjoy a monopoly on prosecuting crime or if there may be private prosecution (by the police, victims, NGOs or others). Private prosecution can provide a last avenue of redress, which is important if political considerations discourage the prosecution from taking on a case. In some jurisdictions, however, the public prosecutor can take over a private prosecution in any event and at any stage of the proceedings.

The prosecutor's career

Prosecutors are essentially lawyers doing one kind of work (prosecuting criminal offences and related proceedings) for one client (the state or an arm of the state, such as customs, an environmental protection agency or other regulatory authority). They are generally legal practitioners, qualified at the tertiary level, of continuing good character, engaging in continuing professional legal education or development, and subject to codes and standards of conduct and practice prescribed by professional associations. Most agencies employ prosecutors of varying experience, from recently qualified lawyers learning the prosecutorial skills under the supervision of managers, to highly experienced professionals making important decisions with minimal supervision. Some may have come from private practice or may go into private practice after a period of prosecuting.

In common law countries judges of superior courts are often appointed from the senior ranks of the practising profession and may come from private practice or the prosecution ranks. In most civil law jurisdictions, by contrast, prosecutors and judges usually follow parallel career paths, training together and changing role from prosecutor to judge, and even back again.

In well-run agencies the pay scales reflect the level of experience and ability at different points in the hierarchy. In some countries prosecuting lawyers and their staff are comfortably remunerated by comparison with colleagues in private practice (although not usually to the same level). In others, prosecutors' pay is poor and this can be an incentive to seek to supplement one's income by corrupt practices. A 2005 study of 16 countries shows wide variations in levels of remuneration and benefits for prosecutors.[2] In Australia, the Czech Republic, Estonia, Finland, Hong Kong, Norway and Scotland, judges earned more than prosecutors while in Austria, Bulgaria, Denmark, Hungary, Netherlands, Slovakia, Slovenia, South Korea and Ukraine, the levels were similar. In Bulgaria, the Czech Republic, Estonia, Hungary, Scotland, Slovakia, Slovenia and Ukraine, salaries increased only a little over one's career, whereas in the others there were significant increases with experience.

Prosecutors may have security of tenure, they may be on term contracts, they may be employed *ad hoc* or they may be popularly elected. All such systems are practised, sometimes together

2 Study reported to the KriminalExpo in Budapest, Hungary in November 2005.

in a single country (e.g. the United States). All have their faults. Prosecutors with tenure may grow lazy or become perverse, knowing they will not be dismissed. If their conditions of employment are not adequate, they may become corrupt. Prosecutors on fixed or short-term contracts are at the mercy of the employer and so may improperly or corruptly seek to please their superiors to ensure continuing employment. Prosecutors who are elected must make campaign promises and seek re-election on the basis of performance. To take one example, in parts of Texas elected judges also assign lawyers to legal aid or public defence briefs. It is an easy matter for a judge to corruptly appoint incompetent and/or ineffective counsel to the defence in order to increase the number of convictions before that judge and thereby enhance his or her prospects for re-election. (See 'Judicial elections in the United States: is corruption an issue?' on page 26.)

Prosecutors as watchdogs on judicial corruption

Prosecution agencies are usually midstream: they receive their work from elsewhere, usually the police or other investigators, and see how the courts subsequently handle it. They are therefore in an excellent position to assess whether or not its collection has been corrupted, or its final processing – the judicial treatment – is corrupted.

Although it is by no means a universal arrangement, many argue that there is value in separating functions into silos of investigation, prosecution and adjudication, provided the silos connect at various levels. Each silo is vulnerable to attack and corruption. If one silo supervises and directs another, then only that silo needs to be targeted to corrupt both. If an investigator is corrupted, for example, there is a good chance of a prosecutor perceiving it before the judiciary becomes involved, or of dealing with it in conjunction with the judiciary (aided by the defence). But if the investigation is subordinate to a corrupt prosecution, the product of the investigation may be corrupted and carried forward to the judicial process in that form.

One way in which these silos connect – and it is a mechanism that provides some protection against corrupt practice – is by disclosure from one to another. Investigators should be required, on pain of disciplinary or criminal penalty, to certify that all relevant information (in proof of charges or of possible defences) has been disclosed to the prosecution. The prosecution, in turn, must disclose all relevant information to the defence in a timely manner.

Corruption by investigators (who are also in the executive branch of government) may be difficult to detect from just the human and material evidence presented for prosecution. If evidence has not been gathered or has been distorted or removed from a brief, its absence may only be discernible from inconsistencies or anomalies in the remaining evidence. Otherwise the prosecution may only become aware of corrupt handling by the investigation from statements made by others involved in the matter, or by an attack made by the defence during a judicial hearing. An additional safeguard is provided where prosecutors confer with witnesses before hearings. Suppressed or inconsistent evidence may be identified in that process. If it is, the prosecutor's remedies include further investigation, further disclosure to the defence or reassessment of the conduct of the prosecution.

Once the investigation work is complete, the prosecutor brings to the court the material that he or she has been given by those whose task it is to gather the evidence (a task shared by prosecutors in many places). In court, a judge might fail to act in accordance with the law or the process applied to that material and other evidence that may be put before the court. The judge's conduct may be deliberate or unwitting, but in either case it corrupts the delivery of justice.

How might the prosecution identify conduct of that sort at that level? One way is if the judge fails to correctly apply legal rules, for example by disallowing proper questions, excluding evidence that should be admitted or admitting strictly inadmissible material. This may give rise to an appeal in many jurisdictions (although a clever corrupt judge may be able to interfere in such a manner without rendering his or her decisions liable to appeal, depending on the particular rules in place). If there is a sufficiently strong suggestion of corruption it should be referred to an appropriate agency, such as a judicial conduct commission or a similar oversight body.

Another way in which a dishonest judge might influence the outcome of a case in a jury trial is by directing the jury so as to favour one side. This may come about by deliberate perversion of the process or, more commonly, it may arise from the judge's own perception of events and views about the way in which the trial should proceed or conclude. The remedies against such conduct are vigilance by the participants in the proceedings at the time and an effective right of appeal to the aggrieved party.

A judge may take a bribe or be threatened and still act according to law, acquitting or convicting on the evidence lawfully considered. That form of corruption may be impossible to detect – although a threat is probably more likely to be reported. Corruption of the process by improper benefits, provided the benefit is hidden, is usually only detectable by examination of the process against the outcome it has produced. If all appears regular on the surface, it will be much harder to identify corruption beneath.

Complicating matters in many jurisdictions are rules barring the prosecution from appealing against an acquittal so the judicial misconduct, deliberate or unwitting, may go uncorrected. At the very least, where judges have a power to direct an acquittal before jury verdict, that direction must be made subject to appeal, as it has been in Australia in Tasmania and Western Australia and recently in New South Wales.

Safeguards

None of these risks of perversion of the course of justice is new or unanticipated and many safeguards are available to meet them.

The primary protection against corruption in the prosecution and adjudication processes is their independence, but it differs among jurisdictions. Prosecutors need independence to make decisions about which charges to press, what evidence to include, when to discontinue prosecution and so on. Such decisions must be based only on the admissible evidence available, the applicable law and any guidelines in place. Decision making must be free from influence by political considerations (except in the broadest sense of importing general community standards in the

general public interest), media comment or representations from individuals or groups in the community with particular agendas that are not part of the prosecution process itself (for example, victims of crime); nor should it be influenced unduly by the views or desires of investigators who may have made large commitments to a particular outcome. In many jurisdictions politicians have considerable influence and control over prosecution decisions and where this occurs the relationships should be transparent, and able to be examined and assessed.

The other side of independence, of course, is accountability. Proper mechanisms must be in place to ensure that prosecution decisions are transparent (i.e. examinable) to an appropriate extent and in appropriate ways. This may need to be balanced against the privacy of individuals and the need for confidentiality about methods of investigation and the like. There also need to be processes by which decision makers can be held accountable for their decisions so that any flaws in the system generally can be identified and corrected in a timely manner. Important safeguards include:

- Appropriate oversight of the conduct of the prosecution, statutorily based
- Regular reporting by the prosecution on the exercise of its functions
- Publicly accessible prosecution guidelines to direct and assist decision makers during the conduct of prosecutions
- Codes of conduct for prosecutors and the judiciary
- Where private prosecutions may be instituted, a power should be vested in the public prosecutor to take over such matters and either continue or terminate them, but only on the application of principles that are well defined and publicly known
- Performance measures that target conduct and not merely results
- Conduct of judicial proceedings in public (with limited exceptions, for example concerning children) and the publication of reasons for decisions.

For all that, there is no way of guaranteeing a corruption-proof system of justice that employs humans. We can, however, make it very difficult to act corruptly, we can improve ways of uncovering it and we can punish it. We can also increase awareness of the risk and educate people in ways of avoiding it.

The investigating magistrate's loss of influence in France, and the effect on the fight against corruption

Eva Joly[1]

With the benefit of hindsight, I can state with confidence that the successful prosecutions in the Elf affair[2] were made possible mainly through the substantial autonomy and wide-ranging investigative

1 Eva Joly worked as an investigating magistrate in France from 1990–2002. She is currently a special adviser to the Ministries of Justice and Foreign Affairs in Norway.

2 The investigation into the accounts of the Paris-based oil company Elf Aquitaine began in 1994. Over an eight-year period, the investigation uncovered a network of corruption and fraud involving top French executives and political elites.

powers that French investigating magistrates used to have at their disposal.[3] I say 'used to have' advisedly, because it seems that there has been a regression of sorts in the fight against corruption. It is obviously tempting to make a connection between the successes achieved in this affair, which stands out because of the vast amounts known to have been embezzled (around €450 million or US $540 million), and the wave of reforms being introduced to the French judicial system. Some of those prosecuted and found guilty had close links with members of the political elite. The whirlwind of procedural reforms sweeping across the criminal justice system is perhaps not entirely unconnected with the notable independence of the French judiciary.[4] The same process has also taken place in Italy following the *mani pulite* or 'clean hands' investigation, which demonstrated the scale of corruption there in much the same way.

Plenty of other factors, both substantive and peripheral, played a part in ensuring the success of the Elf investigations and legal proceedings, such as the work of specialist police officers, highly motivated and competent in financial matters, and the use of teams of experienced, independent-minded magistrates. But the likelihood that such conditions will arise again in France remains extremely remote due to reforms in criminal procedure – some already implemented, others still to come – and to the stalling of the planned reform of the status of magistrates.

It should be recalled that at the outset my brief related to one affair among many (the Bidermann affair), after a report on the company was sent to me by the Commission des Opérations de Bourse.[5]

Progress was made little by little through my specific requests for information, the results of searches and, in certain cases, the direct hearing of witnesses. It was not due to an aggressive policy of supervision by the public prosecutor's financial office, however competent it may be in principle to instigate inquiries into economic offences and to pursue the fight against corruption.

At the time, investigating magistrates had the power to detain those under investigation for serious offences, or to place them under court supervision. This was not, as has been repeated time and again, to put pressure on such people to make them confess (in grand corruption cases, it is unrealistic to hope for confessions during pre-trial investigation) but, as laid down by law, to avoid pressure being placed on the witnesses or co-accused and/or to avoid the risk of evidence disappearing. Sometimes in the middle of an investigation I have come across people still busy shredding paper. It is not unknown for suspects to escape abroad and, when there are signs of an imminent departure, the power to arrest the persons concerned allows the authorities to thwart their desire to evade justice.

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3 The investigating magistrate does not act in the interest of the prosecution or defence, but in the interest of the state in arriving at the truth of a criminal charge. The scope of the inquiry is limited by the mandate given by the prosecutor's office: the investigating magistrate cannot investigate crimes on his or her own initiative.

4 President Jacques Chirac said in 1996 that judicial reform would be a priority of his presidency, but several plans that would have increased independence of the judiciary were shelved when it became unlikely that parliament would vote for a constitutional amendment that would have allowed the High Council of the Magistracy to be reorganised. The government had proposed enlarging the council, which supervises prosecutors and judges, giving it a majority of members from outside the legal profession or politics. The council would then be responsible for appointing senior prosecutors.

5 France's equivalent of the Securities and Exchange Commission. In August 1994 Eva Joly received a report from the Commission raising questions about the accounts of a textile business called Bidermann. Auditors had discovered an Elf investment of 780 million francs (US $140 million) in the textile business. It was later found that Bidermann had been used to channel money to the ex-wife of Elf's recently resigned head, Loïk Le Floch-Prigent.

Since the law on the presumption of innocence was passed on 15 June 2000, coercive measures, such as remanding in custody, can only be decided by a magistrate other than the one in charge of the investigation. This new judge, whose ruling must be given within a few hours, cannot have the detailed knowledge of complex files, thousands of pages long, needed to make a decision based on full knowledge of the facts.[6]

Since then another law on organised crime came into force on 9 March 2004. It strengthens the investigative powers of the public prosecutor's department and makes the status of magistrates even more dependent on the authority of the Minister of Justice, who is a full member of the executive. The chain of authority leading from the Minister of Justice, via the prosecutors' offices, to the deputy public prosecutors is formally recognised in this legislation.

Investigating magistrates in France are currently appointed in only 5 per cent of proceedings. Since the 2004 law, we have witnessed the decline of the office. The public prosecutor's department has now been given investigative powers rivalling those of the investigating magistrate.

A potential obstacle that might have arisen at the very core of the judicial establishment if the powers of investigation into corruption in the Elf affair had been concentrated solely in the hands of the public prosecutor's department relates to the influence of the executive over that department. When serious suspicion began to fall on Loïk Le Floch-Prigent, one of the directors implicated in the affair, he was invited by the president of the republic to head the state-owned railway company during the same period. Such a high-level endorsement of Le Floch-Prigent might have inhibited a less independent public prosecutor from pursuing the case against him.

The crux of the matter remains therefore the status of magistrates in charge of investigations. The close link in France between public prosecutors and the executive, strengthened still further by the 2004 law, has caused a decisive shift in the balance of roles in a case. The investigating magistrate represented a balance of judicial powers between the magistrates in charge of organising prosecutions (the public prosecutor's department) and those responsible for judgement. Given the lack of prosecutorial independence, the planned phasing-out of the investigating magistrate will tilt the balance of authority in the investigation of major corruption scandals, and unduly reinforce political influence. In various ways the possibilities for detecting and curbing major corruption are being closed off. And this is happening just after the Elf affair came to light – the greatest financial scandal ever investigated and brought to trial in Europe. Perhaps it is no coincidence. It was already difficult and even dangerous to attack key figures suspected of corruption, which by definition may implicate people wielding power at the highest levels. But when subtle mechanisms emerge from within the establishment to impede this work, one is facing a near impossible task.

It is a form of internal corruption to introduce additional 'legal' impediments, instead of reinforcing the instruments that already exist and the people who are trying to put them into effect.

It is interesting to note that it is the very parliamentarians who have been under investigation who placed before parliament the most radical plans for abolishing the investigating magistrate. In the wake of the Outreau affair (in which a majority of those detained for alleged child sex abuse were

6 In the common law system, custody/bail decisions are almost always made by magistrates with less than full knowledge of the facts, relying on summaries provided by investigators and prosecutors; a second magistrate might provide a check on incorrect decisions.

subsequently acquitted after a long period in custody), only the investigating magistrate and the role he played were condemned, whereas it was actually the whole institution that failed.

The investigating magistrate did fail, but his lack of insight should have been corrected by the Chambre d'Instruction,[7] by those experts and lawyers who could make themselves heard, and above all by the professionalism and experience of the public prosecutor's department. Quite the reverse: the chief prosecutor contributed to the lack of discernment shown throughout the investigation. Rather than counterbalancing the investigating magistrate, he supported the pre-trial detention by calling for the accused to be remanded in custody, opposing applications for them to be freed and later demanding guilty verdicts at the first trial. It now seems as if this scandal, which highlights all the flaws in the French judicial system, is being used to bring down the single French institution likely to pursue effectively the crimes of the powerful, namely the investigating magistrate. We are at risk of throwing the baby out with the bath water.

In the light of the Elf affair it makes sense to ask if there is not a hidden agenda in the planned reforms that calls into question the very existence of the investigating magistrate, namely, a desire to limit once and for all the powers of the judiciary in the fight against major corruption.

It is as if great corruption scandals are much too serious to fall into the hands of magistrates.

7 The decisions of the investigating magistrate may be the subject of an appeal before the Chambre d'Instruction, a chamber of the court of appeal.

Lesotho Highlands Water Project: corporate pressure on the prosecution and judiciary

Fiona Darroch[1]

The trials for bribery associated with the Lesotho Highlands Water Project (LHWP) began in Lesotho some seven years ago. The indictments before the court, alleging charges of bribe giving and bribe taking, identified 19 defendants, including employees of the LHWP, representatives of corporations, corporations and joint ventures comprising combinations of corporations.[2]

Corporate tactics to evade justice

The corporate defendants in these proceedings did everything within their powers to avoid justice taking its course. Some met privately together in 1999 to discuss the tactics they would employ to fend off conviction.

1 Fiona Darroch is a practising barrister at Hailsham Chambers, London, United Kingdom.
2 *Business Day* (South Africa), 29 July 1999.

The defendants raised an unusually large number of preliminary issues in their efforts to avoid trial. These gave an indication of the fierce struggle to come as large companies with valuable reputations to lose used all the legal arguments at their disposal to avoid the disgrace of criminal conviction. In an early ruling, Judge Brendan Cullinan decided that justice would not, and could not, be served if all the defendants were to be tried together. What followed therefore was a series of sequential trials beginning with that of the chief executive officer of the LHWP, Masupha Sole, presided over by Judge Cullinan. Sole was tried, convicted and subsequently lost an appeal against his conviction.[3]

The Sole trial was followed by the first corporate trial of the Canadian construction company, Acres International Limited. This trial was presided over by Judge Mahapela Lehohla, now Chief Justice of Lesotho. The bench convicted Acres, fined the company heavily and in a subsequent appeal Acres was again defeated.[4] The third trial, that of the German consulting engineering company, Lahmeyer International, followed the same pattern – conviction, a heavy fine and an unsuccessful appeal.[5]

The World Bank evinced interest in both corporate trials. Though it initially found no cause to pursue debarment proceedings against Acres, the Bank subsequently benefited considerably in its own investigation into Acres' corrupt conduct as a result of the work done by the prosecution team in Lesotho. Having wound up its own procedures, the Bank debarred Acres International Limited for a period of three years in July 2004. Significantly, the ban did not extend to Acres' sister companies, Acres International Corporation, Acres Management Consulting and Synexus Global Inc. Debarment procedures in respect of Lahmeyer hesitated during a change in management at the World Bank, but were recently reinstituted.

Acres, the first corporate defendant, was clearly shocked by the judicial process and protested its innocence throughout a trial in which the evidence of its activities clearly pointed to an established pattern of corruption that reflected a wider corporate perspective – echoed privately by other major corporations – that this was an acceptable way to do business in a poor African country. Corporations subsequently facing the same ordeal clearly took a more pragmatic view of their prospects, employing a range of tactics that were aimed at extending the prosecution process far enough to ensure that it would go away. In the main, these involved:

- Attempts to conceal the contents of company bank accounts that would show the movement of corrupt payments to the company's representative and thereafter to the bribe takers
- Attempts to blur the lines between a company and the acts of its employees

3 *E. Sole v The Crown*, Lesotho court of appeal, (CRI) 5 of 2002, judgement delivered 14 April 2003 by Smalberger JA, Melunsky JA (former judges of the South African Supreme Court of Appeal) and Gauntlett JA (senior counsel in South Africa and former chairman of the South African Bar Council).

4 *Acres International Limited v The Crown*, Lesotho Court of Appeal, (CRI) 8 of 2002 delivered on 15 August 2003 by Steyn, president of the court, Ramodibedi JA and Plewman JA (a former judge of the South African Supreme Court of Appeal).

5 *Lahmeyer International GmbH v The Crown*, Lesotho Court of Appeal, (CRI) 6 of 2002, delivered on 7 April 2004 by Steyn, president of the court, Grosskopf JA and Smalberger JA (both former judges of the South African Supreme Court of Appeal).

- Alteration of the identity of the company by its absorption into a different vehicle in the hope that the original company could not be correctly identified, charged and convicted

Following the trial of Lahmeyer, Jacobus Michiel Du Plooy, a 'middle man' responsible for the flow of corrupt payments to corporations working on the LHWP, pleaded guilty. His evidence assisted the prosecution in its pursuit of the Italian corporation Impregilo, the lead corporation in the Highlands Water Venture Consortium (HWV). Impregilo had restructured itself, arguably, in an attempt to avoid prosecution. The company sought unsuccessfully to avoid trial by a number of artful arguments about the serving of the summons, the personal liability of employees for actions taken during the course of their employment and the jurisdiction of the court.[6] In September 2006 Impregilo acknowledged the failure of its evasive tactics and pleaded guilty to 'attempting to defeat the course of justice'. The company was fined M15 million (over US $2 million).[7]

The French corporation, Spie Batignolles, now owned by the multinational AMEC, sought to evade justice by a similar series of unsuccessful legal manoeuvres, arguing that the indictment had cited the 'wrong version' of the company. This argument found no favour with the court. Spie decided to cut its losses by pleading guilty and paying a substantial fine.[8] The trial of Reatile Mochebelele, former chief delegate of the government of Lesotho on the LHWP, was due to start in October 2006. He is accused of taking cash bribes from Lahmeyer. Due to its current debarment proceedings in the World Bank, Lahmeyer is said to be assisting the prosecution.

Political obstacles placed in the prosecution's path

Seven years on this series of trials remains unique, yet Lesotho is one of the poorest countries in the world. The construction of the LHWP has contributed to one of the highest rates of HIV/AIDS on the African continent. The absorption of arable land into the scheme has reduced the capacity of much of the population to sustain itself. There is high unemployment and much suffering. Lesotho's history has been characterised by political instability in recent years. Having gained independence from the UK 40 years ago, it has suffered intermittent threats to peace, although the country has enjoyed constitutional rule from 1993 to the present.

Considerable domestic political pressure was placed at times on the attorney general to reconsider the prosecution of multinational corporations within Lesotho's borders. As each corporate defendant twisted and turned in the attempt to avoid conviction, the process of prosecution has been complex, lengthy and expensive. Frequently, the question arose as to whether this

6 See *Impregilo SpA and Another v Director of Public Prosecutions and others*, Court of Appeal of Lesotho, judgement delivered on 30 April 2006.

7 See Lesotho government press release at www.lesotho.gov.ls/articles/2006/Impregilo_Fined_Justice.htm

8 See address by former attorney general of Lesotho, Fine Maema, to the South African Institute of International Affairs, 19 July 2003. Available at www.saiia.org.za/modules.php?op=modload&name=News&file=article&sid=371&CAMSSID=66857a3f4163b0b280bd13a5a1c2465f

was a suitable use of government funds. This pressure could have been alleviated had proper financial assistance (not in the form of loans) been forthcoming from the international community.

The roles that the World Bank and a phalanx of other international institutions played in the investigation and punishment of bribery in the LHWP raised some difficult questions that remained unanswered throughout the trials. The World Bank initiated a groundswell of support for the prosecutions from other lenders at a crucial meeting in Pretoria in November 1999[9] when the magnitude of what the prosecutors intended to achieve was revealed. It was clear that the trials would be unprecedented in the history of prosecution for bribery. Yet throughout – with the exception of the EU's anti-fraud agency, OLAF[10] – the international community remained silent.

Some defendants are still at large in their native countries with no legal assistance forthcoming from the relevant governments. Indeed, no support has been forthcoming at all, except from OLAF. Any other country contemplating such prosecutions in future will think twice before embarking upon such an expensive and fraught course of action since it is clear that the international community is unwilling to provide support. World Bank president Paul Wolfowitz suggested recently that the institution should have contributed financially to the prosecution of these trials,[11] although other officials indicated that the Bank's charter would not permit it to fund litigation directly. The question that remains unanswered is why international financial institutions have not embraced any lessons from these prosecutions?

The prosecution resists pressure

An analysis of the unprecedented success of these prosecutions is not complex:

- The most important feature has been the leadership from within the cabinet of Lesotho, which allowed the attorney general, with unflinching political courage and determination, to provide a consistent mandate for the prosecuting team to continue its work undeterred by political considerations.
- There is an established body of statute and case law in South Africa and Lesotho that now leaves less room for doubt concerning the doctrine of criminal corporate liability. This doctrine has been subject to a variety of unsuccessful attacks by corporate defendants,

9 The meeting was held on 17 November 1999 in Pretoria, South Africa and was described in a World Bank press release as 'LHW project financiers meet to exchange information'. Present were representatives of 15 organisations, including the World Bank Group, World Bank Group Legal Advisors, Lesotho Government, Lesotho Government's Legal Advisors, South African Department of Water Affairs and Forestry, Banque Nationale de Paris, British High Commission, Lesotho Development Bank South Africa, European Investment Bank, European Union, Lesotho Highlands and Development Authority, Lesotho Highland Commission and others.

10 OLAF, based in Brussels, has provided continuing support to the prosecution team in obtaining crucial company information relating to the foreign corporate defendants.

11 At a Conference on Global Corruption, organised by the Pontifical Council for Justice and Peace on 2–3 June 2006, Wolfowitz was a keynote speaker.

which resulted in the development of Lesotho jurisprudence in this area of law from which the international community has much to learn.
- Guido Penzhorn SC and his team of prosecutors showed a tenacity of purpose that has received international acclaim.

An experienced, retired former chief justice, Judge Cullinan, was appointed to ensure that no question of judicial partiality or incompetence would arise. His reputation, experience and faultlessly argued judgements on the preliminary issues (none of which were appealed) ensured that a high judicial standard marked the start of the process and set its tone thereafter. Judge Lehohla's ruling in the conviction of Acres reflected the emerging revulsion of the Lesotho judiciary for the offence of corporate bribery and, in particular, for the contemptuous attitude that characterised Acres' approach to the litigation process. In interview[12] he noted that the message from the Lesotho courts was uncompromising: corruption will not be tolerated, and will be investigated and tried at the highest level. Top South African advocates were instructed throughout by the defendants in these trials. There have been no allegations of judicial corruption thus far. It is certain that no defendant would have shirked from making that allegation if there were any justification for doing so.

Recommendations

In researching this article, the saddest reflection came from Guido Penzhorn SC, leading counsel for the prosecution, who expressed the conviction that the LHWP trials are likely to be the last of their kind.[13] As the government embarked on its prosecution of companies that bribed officials, other African countries watched as the international community promised that help would be forthcoming. They saw that no such help arrived.

These were not simply fascinating corporate trials in a tiny African nation. They were trials that contained the critical, trans-boundary elements of concealment, as does bribery by its nature. Gathering the evidence that can lead to conviction by examining the history of a corporation and understanding its conduct at specific moments should be an international undertaking. The Lesotho courts provided a vanishing opportunity to appreciate that these trials, devoid of judicial corruption, should have been seen through an international lens with the international community taking responsibility for the part it can best play in future. The debate will continue to rage around measures, such as debarment by the World Bank, mutual debarment, effective due diligence, effective mutual legal assistance, and the function of representatives and their agreements. From a practical perspective, as the international community continues to proselytise against corruption, the absence of any tangible initiatives to prosecute corrupt behaviour by large corporations merely serves to devalue the coinage of the debate.

12 Author interview with Judge Mahapela Lehohla, 24 June 2006.
13 Author interview with Guido Penzhorn, 21 June 2006.

Lawyers and corruption: a view from East and Southern Africa

Arnold Tsunga and Don Deya[1]

In the countries of East and Southern Africa lawyers are integral to the concept of the separation of powers because judges, especially those serving at the higher echelons of the judiciary, are almost entirely appointed from among legal practitioners. The independence of the judiciary and the quality of the legal profession are therefore intricately linked. Most countries of the region have lawyers' associations to regulate the conduct of the profession and secure its independence from the political or business powers of the country. Yet all too often, these function as cartels, controlling access to a lucrative profession, or are targets of manipulation or persecution by the state, or others acting on its behalf.

Corruption involving lawyers and legal associations

Behaviour among lawyers who act as a cog in the judicial corruption machine can be characterised in three ways:

- Lawyers who act as 'couriers', conveying litigants' desires to judicial officers, and judicial officers' demands to litigants
- Lawyers who sense from the conduct of the court that their client must have 'seen the judge' (to corrupt him or her), but turn a blind eye to it
- Lawyers whom the rank and file of the profession know to be corrupt, but who are not brought before a disciplinary mechanism.

Promises to speed up delays in the administration of justice are another avenue for corruption and an important source of corrupt revenue for lawyers.[2] The nature of the delay varies across countries, but includes criminal and civil cases, property transfer and registration, company registration, notary deeds registration, labour disputes, administrative justice and immigration cases.[3] Some lawyers bribe officials to expedite the resolution of their cases; others see a delay in resolution as an opportunity for financial gain on behalf of, or from, their clients.

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1 Arnold Tsunga is the executive secretary of the Law Society of Zimbabwe, executive director of Zimbabwe Lawyers for Human Rights and coordinator of the Human Rights Committee of the Southern African Development Community (SADC) Lawyers' Association. Don Deya is executive director of the East African Law Society and a practising lawyer in Arusha, Tanzania.

2 Southern African lawyers' associations meet annually to review the state of the administration of justice in the SADC. At their 2005 meeting in Harare, it was agreed that justice administration in southern Africa faces delays that are significant and impact on effective access to justice.

3 These were general findings of the Second Symposium on the Administration of Justice in the SADC region, 28–29 October 2005.

In South Africa significant delays in justice delivery and speculation about related corruption have been reported in the cases of migrant labourers, asylum seekers and undocumented people as their vulnerability is very high.[4] Hyper-inflationary environments also drive corruption because they reward delaying tactics.[5] A human rights NGO in Zimbabwe launched a public interest litigation in 2000 after a client was unlawfully shot and paralysed, suing police for Z$2 million, then the equivalent of US $100,000. When a judgement was delivered in 2004, inflation had reduced the value of the claim to US $33, though it remained Z$2 million in local currency.

Even when cases are scheduled well in advance, lack of pre-trial preparation and poor communication between judges, lawyers, court staff and police contribute to delays in criminal matters. Lack of capacity in the registrar's office is also widespread (with the exception of South Africa, Botswana and Namibia), resulting in docket loss, confusion over dockets, misfiling or misplacing documents. Lawyers sometimes agree to adjourn or postpone cases by consent, meaning it is redirected to another judge where it may go through the same process. Poor treatment of witnesses also drives delays: they become hostile and refuse to attend future court proceedings.[6] In this atmosphere unethical lawyers can excel, winning cases by manipulating the system.

Lawyers' associations: weak, but gaining support

The accountability and integrity of lawyers begin with effective self-regulation by the profession. Lawyers in East and Southern Africa are generally members of bar associations or law societies, and are usually licensed by these bodies. Many associations are established by statute. In East Africa, Ethiopia, Kenya, Tanzania and Uganda set down an Advocates Act at the time of independence. As of 2006, Rwanda and Zanzibar are at an advanced stage of enacting a Legal Practitioners Act.[7] In Southern Africa, Botswana, Namibia, South Africa and Zimbabwe all have Legal Practitioners Acts, which established their lawyers' associations. The Malawi Law Society was created in 1965 when parliament passed the Legal Education and Legal Practitioners Act.

4 Based on an interview between Arnold Tsunga, a refugee lawyer from Lawyers for Human Rights and a refugee specialist from Zimbabwe Exiles Forum in Johannesburg on 20 April 2006. The backlog in such cases was believed to be in excess of 150,000. The influx of migrants to South Africa is high because of political and economic instability in neighbouring countries, especially Zimbabwe and Mozambique. With no political leadership effectively dealing with democratic and human rights deficits, corruption will continue unabated.

5 According to Zimbabwe's Central Statistics Office, inflation averaged 1,000 per cent in March 2006. See news.bbc.co.uk/2/hi/business/4765187.stm

6 The information in this paragraph is largely reproduced from an interview between Arnold Tsunga and retired justice Tujilane Chizumila of Malawi in October 2005, reinforced by another interview with her in Harare in March 2006. Southern African lawyers agreed with her views on the state of the administration of justice at the SADC Symposium, 28–29 October 2005.

7 Zanzibar has been part of the United Republic of Tanzania since 1964, but was once a separate legal jurisdiction and had a Legal Practitioners Decree that was abolished by presidential decree in that year.

Most lawyers' associations in southern Africa are autonomous and self-regulating bodies with a mandate to:

- Control admission to practise as members of the legal profession
- Maintain registers of members
- Promote the study of law and contribute, undertake or make recommendations on legal training
- Promote justice and defend human rights, the rule of law and judicial independence
- Control, manage and regulate the legal profession, including oversight on compliance with ethics and an acceptable code of behaviour in the practice of law.

Beyond this formalised mandate, lawyers' associations play three additional, implicit roles:

- Trade union for lawyers
- Regulator of the profession
- A wide – usually statutory – public-interest role.

Balancing these roles, particularly the first two, is difficult since they tend to clash. Acting as a trade union means the association and its principals will protect and be lenient to, or at least understanding of, its members. However, the bar association's regulatory role requires it mercilessly to wield the disciplinary stick on the same members. This becomes difficult when the governing council or disciplinary committee of the association is directly elected by the membership.

The easiest way out of this potential quagmire is to insulate the regulatory or disciplinary branch of the profession from direct election. This entails appointment by the appropriate governmental arm, such as the Ministry of Justice, attorney general or a similar office. In Malawi, the Legal Education and Legal Practitioners Act created a disciplinary committee, composed of the solicitor general (a state legal officer) and two members elected by the society, to conduct enquiries into allegations of indiscipline. If necessary and appropriate, matters can be referred to the attorney general.[8] The perception in the Malawi legal profession is that the disciplinary committee is fairly independent, and has a strong voice in fighting for public and private accountability.[9]

Such a process, however, may open the profession to manipulation if the government appoints officers who may be seen as biased. Swaziland and Tanzania, for example, have lawyers' associations but their effectiveness in ensuring true independence is hampered by a disciplining process that is perceived as mainly, if not solely, controlled by the executive.[10] In other countries that have not suppressed corruption and which have declining standards of democracy

8 See Professor Fidelis Edge Kanyongolo, *Malawi – Justice Sector and the Rule of Law*, Open Society Initiative for Southern Africa (2006). Available at www.soros.org/resources/articles_publications/publications/malawi_20060912/malawidiscussion_20060912.pdf#search=%22Malawi%20Law%20Society%20%2Bestablished%22

9 Mabvuto Hara, councillor of Malawi Law Society, reporting to SADC lawyers on 29 October 2005, Harare.

10 Author interview with Caleb Lameck Gamaya, practising lawyer and advocate from Tanzania, on 5 September 2006. Arnold Tsunga also interviewed lawyer Muzi Masuku in Swaziland on 1 July 2006.

and poor human rights records, lawyers' associations are often targets of manipulation and persecution by the state.

Without a primary focus on its ethical, disciplinary and regulatory roles, lawyers' associations operate as virtual cartels, controlling the price of legal support services, entry into practice of new or foreign lawyers, and so on. They ensure work only for registered legal practitioners and thereby protect, guarantee and control a market. External environments that are systemically corrupt may reinforce these dynamics. Success for lawyers is then not seen as related to merit, but to patronage. In Zimbabwe, this may mean being given farms and other expropriated assets (see 'Corrupt judges and land rights in Zimbabwe' on page 35). Lawyers who remain ethical and upright may be persecuted, vilified, de-legitimised and often dismissed as agents of foreign interests. The Law Society of Zimbabwe (LSZ) finds itself in this ideological dilemma as a result of attempting to enact an ethical and disciplinary role. Some lawyers and judges collaborating with and protected by powerful ruling politicians benefited from property expropriations under the guise of 'correcting the historical imbalances of colonialism' and at least three lawyers – one of whom was promoted to deputy chairperson of the government-controlled anti-corruption commission – are under review by the LSZ's disciplinary committee. It will determine whether their involvement in the forcible expropriation of assets constituted dishonourable conduct that brought the legal profession and the administration of justice into disrepute. In attempting to address these challenges and distinguish ethical from corrupt practices, the LSZ has earned the wrath of the authorities, which labelled it a vestige of colonialism and a tool of imperialism.[11]

Beyond political factors, security sector instability may leave the profession with no capacity to act as a force of accountability. In Southern Africa, the post-conflict situations in Mozambique, Angola and the Democratic Republic of Congo have weakened lawyers' associations, and access to justice is in its teething stage for the majority of people. Mozambique and Angola report a serious lack of resources and adequately trained legal and judicial officers. Their governments have not fully accepted that self-regulating lawyers' associations are part of the process that nurtures democracy and good governance, and a prerequisite for fighting corruption effectively.[12]

Recommendations to the profession and lawyers' associations

Here are seven recommendations to engender more independent and effective lawyers' associations that can assert adherence to rules and ethics amongst their members. Such associations can also insulate lawyers from corruption in the wider political and socio-economic context.

- **Establishment of lawyers' associations by statute**
  Lawyers in most Southern African countries experience improved ethical behaviour when the legal profession regulates itself, rather than answering to the executive or another

11 Based on author's interview with Tinoziva Bere, a lawyer and counsellor with the LSZ, on 28 July 2006.

12 The Mozambican League for Human Rights reports that the rule of law situation has deteriorated, resulting in police brutality, corruption, labour strife and prison conditions that remain extremely harsh.

government office.[13] The ability of lawyers' associations to act independently may be linked to their size: the smaller the bar, the less likely it will be able to be stand up to the state or other influential political and economic sectors. Experience from East Africa shows that when an association's active membership passes 1,000, it is better able to insulate itself from external interference. It appears that a critical mass of members is needed to take a principled position, including on corruption.

- **Structures must support associations' ability to discipline members**
  Disciplinary proceedings should be brought before an impartial disciplinary committee established by the profession, an independent statutory authority or a court, and should be subject to independent judicial review. This may mean insulating the regulatory/disciplinary arm of the association from direct election by members toward appointment by another appropriate office (i.e. Minister for Justice, or attorney general), although this might imply a risk of political interference.

- **Regulate the admission of new lawyers into practice/partnerships**
  Statutes must empower associations to regulate the admission of new lawyers into partnerships to protect the public from unscrupulous, incompetent and unqualified practitioners. This may mean setting minimum periods of tutelage or assistantship before lawyers are empowered to run their own practices. Pay rates for non-partnered lawyers may need to be reviewed by associations. If lower-ranked lawyers are grossly underpaid compared to partners, they may resort to separately charging clients or receiving payment outside the office to supplement their incomes.[14]

- **Periodic renewal of practice certificates**
  Legislation that allows associations periodically to renew practising certificates can strengthen their ability to maintain the integrity of the profession. In Botswana, Namibia, South Africa, Tanzania, Zambia and Zimbabwe, lawyers' associations require a clean audit certificate on trust funds before practice certificates can be renewed. Such scrutiny of audit certificates can effectively prevent corruption and money laundering by lawyers.[15]

- **Continuing legal education as condition for renewal of practice licences**
  Lawyers' associations can set minimum compulsory continuous legal education for members as a condition for renewal of practising licences. Legal education should include ethics, anti-corruption law and practice, and other areas to improve competence, reducing the temptation to cut corners.

13 The promulgation of Botswana's Legal Practitioners Act 1996 has improved the conduct of attorneys in that country, according to Sanji Monageng, then executive secretary of the Botswana Law Society and a commissioner in the African Commission. Before that the attorney general's office regulated lawyers in private practice.

14 In many Southern African countries the difference between the pay scales of partners and qualified professional assistants (non-partner lawyers) is highly disproportionate. A non-partner lawyer with seven years experience in Mutare, Zimbabwe earns Z$30 million (US $100) per month, while a partner in the same firm earns in excess of Z$300 million (US $1,000).

15 Based on author's interview with Caleb Lameck Gamaya.

- **Codes of conduct for legal practitioners**
  Lawyers' associations should establish codes of conduct in accordance with recognised international standards and norms.[16] Since cases of corruption are difficult to prove, lawyers' associations should use their power to ensure that unethical conduct, even if it falls short of criminality, is promptly investigated and punished. This includes cases where charges against a lawyer for criminal conduct or corruption are dismissed in a court of law. The association should reserve the right of inquiry in the interests of protecting the profession's reputation.

- **Monitoring compliance with codes of conduct**
  Legislation creating statutory lawyers' associations in Malawi, Namibia, South Africa, Zambia and Zimbabwe allows them to define methods for testing compliance with ethical conduct. If used wisely, spot checks can be potent in detecting corrupt behaviour and rooting it out.[17]

Broader reforms to fight corruption in the legal profession

- **Use of alternative dispute resolution (ADR) to reduce backlogs**
  ADR mechanisms, whereby the plaintiff and defendant try to reach a settlement outside court, could significantly reduce backlogs, speed up hearings and limit incentives for corruption. There is recognition in principle of the need for these improvements in most countries of East and Southern Africa though implementation has yet to get off the starting block.[18]

- **Computerisation and use of information and communication technologies**
  Computerisation allows for better accessibility of files and improved monitoring, reduces backlog and limits loss of information. Bringing computer-based systems into legal practice narrows the scope for rent seeking or other corrupt activity. This is an area where lawyers, lawyers' associations and law schools could lead by example. Compulsory IT training for legal professionals should be made a requirement for renewal of licences to practise. Partnerships between IT and law faculties in universities could produce prototypes of case file-management systems, making it more difficult for government to say that it is impossible, difficult or expensive. Lawyers' associations could help members to procure law chambers' information systems. Once a critical mass of chambers has become computerised, courts that are manual will be less acceptable.

- **Involvement in judicial appointments by legal practitioners**
  Authorities wanting to appoint judges from the bar should involve the heads of lawyers' associations to ensure that appointees have clean practice records. Representatives of lawyers' associations – as well as representatives of other civil society organisations – should

16 See UN Basic Principles on the Role of Lawyers (article 26).
17 Based on author's interview with Tinoziva Bere.
18 See 'The "other 90 per cent": how NGOs combat corruption in non-judicial justice systems' on page 129.

be included in the judicial decision-making processes (e.g. on the judicial service commission).

- **Anti-corruption education in law faculties and post-graduate law schools**
  There is now a significant body of international and regional conventions, national statutes, and international, regional and national case law to sustain a one-semester course on corruption prevention. The course should be multi-disciplinary, incorporating economic analyses of the negative effects of corruption on economies, and on economic, social and cultural rights.[19]

- **Mentoring programmes**
  Mentoring programmes that expose promising lawyers to reputable senior judges and magistrates have been shown to improve legal-judicial performance while maintaining transparency and accountability.[20]

- **Other types of organisations to support corruption prevention among lawyers**
  Lawyers' associations tend to be conservative clubs. Experience in East Africa shows that other constellations of lawyers tend to be more dynamic and proactive. For instance, women lawyers' associations[21] have been able to address not only traditional women's issues, such as property and inheritance rights, but wider governance issues including constitutional reform and budget advocacy. Other membership organisations, such as the Kenyan Section of the International Commission of Jurists, have a consistent programmatic focus on judicial integrity and have become a key knowledge repository on the issue. Looking beyond traditional associations, incorporating whistleblower protections or anti-corruption telephone hotlines can help strengthen the fight against corruption in the profession.

19 This is how environmental law was introduced as a discipline in African law schools in the mid-1990s.
20 See Economic Commission for Africa, African Governance Report (2005). Available at www.uneca.org/agr/
21 For example, the Ethiopian Women Lawyers' Association (EWLA), the Federation of Kenya Women Lawyers (FIDA Kenya), Federation of Uganda Women Lawyers (FIDA Uganda), Tanzania Women Lawyers' Association (TAWLA) and the Zanzibar Female Lawyers' Association (ZAFELA).